IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.2547 of 2002

1.T.Palanisamy
2.Poochi
3.Minor Vadivel
son of late C.Sadayan and
rep. by his mother and
natural guardian Mrs.Poochi .. Appellants

Vs.

1.The State of Tamil Nadu
rep. by its Secretary
Revenue Department
Fort St.George, Chennai-9.
2.The Secretary to the
Government of Tamil Nadu
Industries Department
Fort St.George, Chennai-9.
3.The District Collector
Villupuram District. .. Respondents

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 9.7.2002 made in W.P.No.2759 of 1995. Writ Petition filed under Article 226 of the Constitution of India the issuance of the writ of Mandamus to forbearing the respondents their men, agents and Subordinate from in any manner disturbing the posssession and enjoyment of the petitioner lands in S. NO. 41 of Perumbudur Village Sankarapuram Taluk, VRP District.

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For Appellants : Mr.Saravanaswami
For Respondents : Mr.R.Thirugnanam
Spl. Government Pleader

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The relief sought for by the unsuccessful writ petitioners for issue of a writ of Mandamus to forbear the respondents from disturbing the possession and enjoyment of the petitioners of the lands in S.No.41 of Perumbur Village, Sankarapuram Taluk, V.R.P.District, was rejected by the learned Single by order dated 9.7.2002 made in W.P.No.2759 of 1995, as it was not in dispute that the impugned land in No.295, Perumbur Village in an extent of 2.40 Hectares out of 303 Hectares in Survey No.41 is a Government poromboke land and the petitioners/appellants are only unauthorised occupants. That apart, the claim of the petitioners/appellants that they had already submitted an application for assignment of land was also rejected by the learned Single Judge, on the ground that the assignment of poromboke land is banned in view of the Government order. However, the learned Single Judge made it clear that the eviction proceedings against the petitioners/appellants could be taken only after issue of show cause notice and after following the procedure contemplated under the Tamil Nadu Encroachment Act, 1905.

2. Exasperated by the said order of the learned Single Judge dated 9.7.2002 made in W.P.No.2759 of 1995, the petitioners have preferred this appeal.

3. Mr.Saravanaswami, learned counsel for the appellants reiterated the submissions that were made before the learned Single Judge.

4. It is well settled that removal of encroachment needs urgent action. What requires to be done by the competent authority is to ensure constant vigil on encroachment of the public place. If the encroachment is of a recent origin, the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and

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reasonable force can be used to have the encroachment removed. Therefore, giving a fair and reasonable opportunity in the matter of eviction of encroachers, assuming the same is protected under any prescribed statute, must be a pragmatic and realistic one to meet the given fact situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. (vide AHMEDABAD MUNICIPAL CORPORATION v. NAWAB KHAN GULAB KHAN reported in AIR 1997 SC 152)

5. Again, in SEKHAR v. MALLIGARJUNA RAO reported in (2000) 3 MLJ 123, a Division Bench of this Court has held as follows:

> " ... Mere possession on the public land will not give any right to the appellants to give any indulgence from this Court, when admittedly, the disputed land is a public land. So far as the other point that whether the writ petitioner has any right over the property is concerned, the same cannot be challenged at this stage for want of any legal right. That apart, this being a question of fact, it cannot be gone into at this stage. ... This Court is of the firm view that the wrong doers cannot seek indulgence, nor this Court will issue direction to perpetuate the illegality in exercising the power under Article 26 of the Constitution. ... "
>
> (emphasis supplied)

6. Hence, the petitioners/appellants being encroachers, have no right to seek assignment of the Government lands as a matter of right, that too when the assignment of Government lands is banned by the Government. In any event, the statutory right of the petitioners/appellants for an opportunity of being heard before evicting them from the lands has been taken care in the order of the learned Single Judge dated 9.7.2002 made in W.P.No.2759 of 1995.

For the reasons aforesaid, finding no merits, this writ appeal is dismissed. No costs. Consequently, W.A.M.P.No.4302 of 2002 is closed.

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Sd/
Asst.Registrar

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  Fort St.George, Chennai-9.

3.The District Collector
  Villupuram District.

+ one cc to the Government Pleader sr no. 25720
+ one cc to M/s. Muthumani Doraisamy,Advocate sr o. 25935

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